

### **REMARKS/ARGUMENTS**

Claims 1-20 were presented for examination and are pending in this application. In an Official Office Action dated August 7, 2006, claims 1-20 were rejected. The Applicant thanks the Examiner for his consideration and addresses the Examiner's comments concerning the claims pending in this application below.

Applicant herein amends claims 1, 7, 9, and 20 and respectfully traverses the Examiner's prior rejections. No claims are currently canceled and no new claims are presently added. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution and issuance of the application. In making these amendments, Applicant has not and is not narrowing the scope of the protection to which the Applicant considers the claimed invention to be entitled and does not concede, directly or by implication, that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicant reserves the right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

Based on the above amendments and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and withdraw them.

#### **Objection to the Specification**

The abstract of the specification was objected to for being in excess of 150 words. The abstract has been amended to be 150 words or less. Withdrawal of the objection is respectfully requested.

### **Objection to the Declaration**

The declaration of the inventor is objected to for failing to identify the address and citizenship information of the inventor. A copy of the inventor's declaration complete with address and citizenship information which was filed with the application is provided herein.

### **Rejection of the claims under 35 U.S.C. §112**

Claim 1 was rejected under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicant regards as the invention. Specifically, the Examiner asserts that the term "automatically" renders claim 1 indefinite. The installation and reprovisioning of the software is based on control logic as described in the specification generally in paragraphs [0025] and [0030]. Control logic is rule based and can be implemented using a computer. Claims 1, 7, and 20 have been amended to further define the automatic installation of software. Reconsideration is requested.

### **Rejection of the Claims under 35 U.S.C. §102(e)**

Claims 1-13, 15 and 17-20 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0195921 by Becker et al. ("Becker"). Applicant respectfully traverses these rejections in light of the following remarks.

MPEP §2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed.

Cir.1987). “The identical invention must be shown in as complete detail as contained in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

The claims as currently amended recite features lacking in the applied references. For example, independent claims 1, 9 and 20 recite, among other things and in varying language, “wherein the target compute element is selected by comparing the at least one operating parameter with the compute element characteristics.” The selection of the target compute element based on such a comparison is not disclosed in Becker.

Becker appears to disclose a system and method for automated provisioning of software applications onto one or more computers. See Becker Abstract. As described in paragraphs [0036-0037] of Becker, one or more server machines (computers) are selected for installation of an application. The application is configured based on environmental characteristics of that machine. Absent from Becker is a discussion on how the server is selected. It appears that Becker is directed toward the configuration of an application to a particular machine and not the selection of a machine based on a comparison between an operating parameter and computer element characteristics of each machine as is claimed by the Applicant.

Furthermore, Becker fails to disclose, teach or suggest a repository of compute element characteristics for each of the plurality of compute elements. Becker teaches that each machine possesses that machine’s characteristics and that these characteristics are used to provision the application. In Becker, element characteristics of the machine are not used as a criterion for selection. Since the selection of a machine based on these characteristics as claimed by the Applicant is not disclosed, taught or suggested in Becker, a repository of such characteristics is unnecessary as once a machine is chosen the provisioning method of Becker can

obtain the characteristics of that machine from that machine. See Becker, Fig. 1.

Claims 1, 9 and 20, as well as the claims that depend from claims 1, 9 and 20 are thus deemed patentable over Becker. Reconsideration is requested.

**35 U.S.C. §103(a) Obviousness Rejection of Claims**


Claims 14 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Becker. As discussed above, each and every element of independent claim 9, from which claims 14 and 16 depend, are not taught or suggested by Becker. Claims 14 and 16 are for at least the same reasons thus deemed patentable over Becker.

In view of all of the above, the claims are now believed to be allowable and the case in condition for allowance which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicant's attorney at the telephone number listed below.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

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